



order absent a clear abuse of discretion. *State v. Schrock*, 149 Ariz. 433, 441, 719 P.2d 1049, 1057 (1986).

¶2 Bayliss sought post-conviction relief pursuant to Rule 32.1(g), claiming our supreme court’s decision in *State v. Gant*, 216 Ariz. 1, 162 P.3d 640 (2007), was a significant change in the law that should apply retroactively to his case, requiring the trial court to vacate his conviction and sentence. Bayliss argued, as he does on review, that, based on *Gant*, the roadside search of his car, conducted after he was under arrest and without a warrant, was unconstitutional. Denying relief, the court found that “the ‘change in the law’ does not implicate a constitutional right of such fundamental nature that it appl[i]es to the very structure of the criminal proceedings herein” and that *Gant* “does not have retroactive applicability.” The court further found that Bayliss had “knowingly, intelligently and voluntarily waived his rights in entering his plea agreement . . . , including his right to challenge an alleged unlawful search.” The court added that Bayliss “was presumptively properly advised by his trial counsel as to the law of search and seizure at the time of his change of plea; no colorable issue of ineffective assistance of counsel has been raised herein.”<sup>1</sup>

¶3 Bayliss has not sustained his burden of establishing the trial court abused its discretion. Even assuming arguendo that *Gant* is retroactively applicable and that its application here would invalidate the search of Bayliss’s car, Bayliss was not entitled to relief. He waived any challenge to the propriety of the search by entering the plea. *See*

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<sup>1</sup>Although the trial court essentially rejected any claim of ineffective assistance of counsel that could relate to the claim raised, Bayliss has not asserted a claim of ineffective assistance.

*State v. Hamilton*, 142 Ariz. 91, 94, 688 P.2d 983, 986 (1984) (“It is well established that entry of a valid guilty plea forecloses a defendant from raising nonjurisdictional defects.”) (footnote omitted); *see also State v. Quick*, 177 Ariz. 314, 316, 868 P.2d 327, 329 (App. 1993) (defendant who enters guilty plea waives all nonjurisdictional defects, including claims of ineffective assistance of counsel, other than claim of ineffectiveness related to validity of plea). And, as the trial court recognized, a challenge to the legality of a vehicle search is not a claim of such constitutional magnitude that it can only be expressly waived, that is, knowingly, voluntarily, and intelligently. *Cf. Quinton v. Superior Court*, 168 Ariz. 545, 549, 815 P.2d 914, 918 (App. 1991) (relying on *Menna v. New York*, 423 U.S. 61, 62-63 (1975), in holding waiver of protection against double jeopardy cannot be implied but must be express); *see also State v. Swoopes*, 216 Ariz. 390, ¶¶ 21-22, 166 P.3d 945, 951-52 (App. 2007) (discussing kinds of constitutional rights that are personal in nature and cannot be implicitly waived). We are not aware of authority, nor has Bayliss cited any, to support the proposition that a case decided after the entry of an otherwise valid plea requires the plea be vacated if the case would have provided the basis for a successful motion to suppress evidence had the case predated the plea.

¶4 The petition for review is granted, but for the reasons stated herein, relief is denied.

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PHILIP G. ESPINOSA, Judge

CONCURRING:

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PETER J. ECKERSTROM, Presiding Judge

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GARYE L. VÁSQUEZ, Judge